

Decision **DRAFT DECISION OF COMMISSIONER PEEVEY**

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

In the Matter of the Application of San Diego Gas & Electric (U 902 M) for Authority to Increase Its Short-Term Borrowing Authorization to an Aggregate Amount Not to Exceed \$400,000,000 in Addition to that Amount Otherwise Authorized by Public Utilities Code Section 823(c), and to Simultaneously Extend the Term of Such Authorization Through December 31, 2010.

Application 05-01-031  
(Filed January 31, 2005)

**FINANCING ORDER GRANTING SAN DIEGO GAS & ELECTRIC  
COMPANY AUTHORITY THROUGH DECEMBER 31, 2010,  
TO ISSUE \$400 MILLION OF SHORT-TERM DEBT**

**Table of Contents**

OPINION .....	2
1. Summary .....	2
2. Chronology of SDG&E's Authority to Issue Short-Term Debt.....	2
3. SDG&E's Application.....	3
i. Authority to Increase the Amount of Short-Term Debt.....	4
a. SDG&E's Request .....	4
b. Discussion .....	5
ii. Extension of Authority to Issue Short-Term Debt .....	7
a. SDG&E's Request .....	7
b. Discussion .....	7
iii. Elimination of the 5% Condition .....	7
a. SDG&E's Request .....	7
b. Discussion .....	8
4. Exemption from the Competitive Bidding Rule .....	8
5. General Order 24-B.....	9
6. Section 1904(b) Fee .....	9
7. Categorization and Need for Hearings .....	11
8. Comments on the Draft Decision .....	11
9. Assignment of Proceeding .....	11
Findings of Fact.....	11
Conclusions of Law .....	13
ORDER.....	15

## OPINION

### 1. Summary

This Decision grants San Diego Gas & Electric Company (SDG&E) authority under Pub. Util. Code § 816 *et seq.*,<sup>1</sup> to issue \$400 million of short-term debt through December 31, 2010, for the following purposes: (i) temporarily finance new utility infrastructure; (ii) finance balancing account undercollections and fuel inventories; (iii) temporarily finance the retirement and refunding of long-term debt and preferred stock; and (iv) satisfy other utility-related short-term cash needs. This Decision also eliminates the requirement for SDG&E to reduce its outstanding short-term debt to 5% of the par value of SDG&E's long-term capital outstanding at least once every 12 months. Finally, This Decision authorizes SDG&E to report on a quarterly basis the information required by General Order 24-B regarding the short-term debt authorized herein.

### 2. Chronology of SDG&E's Authority to Issue Short-Term Debt

Decision (D.) 92-11-059 authorized SDG&E to issue \$200 million of short-term debt to (i) finance balancing account undercollections and fuel inventories, (ii) temporarily fund new utility plant, (iii) retire and refund long-term debt and preferred stock, and (iv) satisfy other short-term cash needs that might arise from time to time.<sup>2</sup> Decision 97-11-012 extended this authority through December 31, 2002.

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<sup>1</sup> All statutory references are to the Public Utilities Code unless otherwise indicated.

<sup>2</sup> This authority was in addition to the short-term debt that SDG&E may issue without Commission authorization pursuant to § 823(c).

Decision 01-02-011 authorized SDG&E to issue \$800 million of short-term and long-term debt to finance the undercollection in SDG&E's Energy Revenue Shortfall Account (ERSA). The Decision also authorized SDG&E to use \$200 million of the \$800 million for the purposes authorized by D.92-11-059 (as extended by D.97-11-012), but only to the extent that SDG&E did not need the \$200 million to finance its ERSA undercollection. Decision 01-02-011 superseded the authority granted under D.92-11-059 and D.97-11-012.

Decision 02-06-024 reduced SDG&E's authority to issue debt to finance its ERSA from \$800 million to \$400 million. The Decision also granted SDG&E authority through December 31, 2002, to use \$200 million of the \$400 million for the purposes authorized by D.92-11-059 and D.97-01-012, but only to the extent that SDG&E did not need the \$200 million to finance its ERSA undercollection.

In D.02-12-067, the most recent decision addressing SDG&E's short-term debt authority, the Commission extended SDG&E's authority to issue \$200 million of short-term debt through December 31, 2007, for the purposes authorized by D.92-11-059 and D.97-01-012. Decision 02-12-067 also prohibited SDG&E from using the \$200 million to fund inter-corporate borrowings.

Importantly, D.97-11-012 and D.02-12-067 required SDG&E to reduce the aggregate amount of short-term debt to 5% of the par value of long-term capital (long-term debt, preferred stock, and common stock) outstanding at least once every 12 months. The purpose of this requirement was to prevent SDG&E from issuing excessive amounts of short-term debt for extended periods.

### **3. SDG&E's Application**

SDG&E filed Application (A.) 05-01-031 on January 31, 2005. Notice of A.05-01-031 appeared in the Commission's Daily Calendar on February 3, 2005. There were no protests or other responses to the Application.

In A.05-01-031, SDG&E requests several revisions to its existing authority to issue short-term debt. Each of the requested revisions is addressed below.

**i. Authority to Increase the Amount of Short-Term Debt**

**a. SDG&E's Request**

SDG&E is currently authorized to issue \$200 million of short-term debt in excess of the amount allowed by § 823(c).<sup>3</sup> In A.05-01-031, SDG&E requests authority to increase the amount of short-term debt it may issue to \$400 million. As in the past, SDG&E intends to use short-term debt for the following purposes: (i) temporary financing for new utility infrastructure; (ii) balancing account undercollections and fuel inventories; (iii) temporary financing for the retirement and refunding of long-term debt and preferred stock; and (iv) other short-term cash needs that may arise from time to time.

SDG&E represents that it needs authority to issue \$400 million of short-term debt because SDG&E must invest approximately \$1.96 billion during 2005 - 2007 for new electric generation and \$1.2 billion during 2008 - 2009 for new electric transmission. In all, SDG&E's infrastructure investments will average over \$600 million annually during 2005 – 2009, which is substantially higher than SDG&E's historical expenditures of \$350 - \$400 million per annum.

SDG&E plans to finance infrastructure investments with well-timed placements of long-term debt and preferred stock. SDG&E is concerned, however, that it might not be able to obtain long-term financing due to unexpected events as was the case during the recent California energy crisis. SDG&E states that having authority to issue \$400 million of short-term debt will

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<sup>3</sup> SDG&E currently has the ability to issue approximately \$68 million of short-term debt pursuant to § 823(c). (A.05-01-031, attached testimony, Schedule VIII.)

enable SDG&E to finance large infrastructure investments if SDG&E's access to capital-markets becomes unexpectedly limited.

**b. Discussion**

SDG&E's request for authority to increase the amount of short-term debt it may issue from \$200 million to \$400 million is subject to §§ 816, 823(b), 823(c), and 823(d) which state, in relevant part, as follows:

**§ 816:** The power of public utilities to issue debt is a special privilege, the right of supervision, regulation, restriction, and control of which is vested in the State, and such power shall be exercised as provided by law under such rules as the commission prescribes.

**§ 823(b):** A public utility may issue notes, for proper purposes and not in violation of any provision of law, payable at periods of not more than 12 months after the date of issuance of the notes without the consent of the commission.

**§ 823(c):** Notwithstanding the provisions of subdivision (b), no public utility . . . shall, without the consent of the commission, issue notes payable at periods of not more than 12 months after the date of issuance of the notes if such notes and all other notes payable at periods of not more than 12 months after the date of issuance of such notes . . . would exceed in aggregate amount 5 percent of the par value of the other securities then outstanding. In the case of securities having no par value, the par value for the purposes of this subsection shall be the fair market value as of the date of issue.

**§ 823(d):** No note payable at a period of not more than 12 months after the date of issuance of such note shall, in whole or in part, be refunded by debt or equity . . . without the consent of the commission.

The Commission has broad authority under § 816 *et seq.*, to accept or reject a utility's request to issue short-term debt. In general, the Commission will

authorize a utility to issue short-term debt when the utility can demonstrate a reasonable need to do so. Where necessary, the Commission may attach conditions to a utility's authority to issue short-term debt in order to protect and promote the public interest.

We conclude that it is in the public interest to grant SDG&E's uncontested request for authority to issue \$400 million of short-term debt. The health, safety, welfare, and prosperity of California depends on SDG&E having sufficient generation and transmission capacity to meet the needs of its customers. To this end, SDG&E intends to spend more than \$3 billion during 2005 – 2009 to build new generation and transmission capacity. This is a substantial financial commitment for a company that had total operating revenues of \$2.274 billion and \$2.311 billion in 2004 and 2003, respectively.<sup>4</sup> Due to the sheer size of the forecasted capital expenditures, there is a real possibility that SDG&E's short-term cash needs could reach \$400 million.

SDG&E shall not use the short-term debt authorized by this Decision to fund dividends, inter-corporate borrowing, or management fees paid to its parent company or other affiliates. Consistent with § 824, SDG&E shall maintain records to (1) identify the specific short-term debt issued pursuant to today's Decision, and (2) demonstrate that the proceeds from such debt have been used only for the purposes authorized by today's Decision.<sup>5</sup>

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<sup>4</sup> Annual Report of Sempra Energy for 2004. We take official notice of this information pursuant to Rule 73.

<sup>5</sup> Section 824 states: "The commission may require...utilities to account for the disposition of the proceeds of all sales of...bonds, notes, or other evidence of indebtedness, in such form and detail as it deems advisable, and may establish such rules as it deems reasonable and necessary to insure the disposition of such proceeds for the purposes specified in its order."

**ii. Extension of Authority to Issue Short-Term Debt****a. SDG&E's Request**

SDG&E is authorized by D.02-12-067 to issue \$200 million of short-term debt through December 31, 2007. In A.05-01-031, SDG&E requests authority to increase the amount of short-term debt from \$200 million to \$400 million, and to extend its authority to issue short-term debt from December 31, 2007, to December 31, 2010. SDG&E's request to increase the amount of short-term debt was addressed previously. Its request to extend its authority to issue short-term debt is addressed here.

SDG&E states that it needs authority to issue short-term debt through 2010 because its capital expenditures through 2010 will average over \$600 million per year, which is substantially higher than SDG&E's historical expenditures of \$350 - \$400 million per annum. SDG&E believes that it is prudent to extend its authority now so that it can plan for future infrastructure investments.

**b. Discussion**

We find that SDG&E has a reasonable need to issue short-term debt through December 31, 2010. Therefore, we grant SDG&E authority under § 816 *et seq.*, to issue short-term debt through December 31, 2010, in accordance with the terms and conditions adopted by this Decision.

**iii. Elimination of the 5% Condition****a. SDG&E's Request**

SDG&E is required by D.02-12-067 and D.97-11-012 to reduce its outstanding short-term debt to 5% of the par value of SDG&E's long-term capital



then outstanding at least once every 12 months.<sup>6</sup> The purpose of this condition is to prevent SDG&E from maintaining excessive levels of short-term debt for extended periods of time.<sup>7</sup>

SDG&E requests that the 5% condition be eliminated. SDG&E asserts that it may be forced to rely on short-term debt to finance new utility infrastructure in the event SDG&E cannot obtain long-term financing. However, the 5% condition might prevent SDG&E from issuing enough short-term debt to finance new utility infrastructure. Therefore, to ensure that SDG&E can finance new utility infrastructure, SDG&E argues that it is necessary to eliminate the 5% condition.

#### **b. Discussion**

We conclude that it is in the public interest to grant SDG&E's uncontested request to eliminate the 5% condition. We agree with SDG&E that eliminating this condition will help ensure that SDG&E has access to sufficient capital to fund needed infrastructure investments.

#### **4. Exemption from the Competitive Bidding Rule**

In D.92-11-059, the Commission held that the Competitive Bidding Rule set forth in Resolution F-616 does not apply to short-term debt.<sup>8</sup> Accordingly, the short-term debt authorized by this Decision is not subject to the Competitive Bidding Rule.

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<sup>6</sup> D.02-12-067, *mimeo.*, pp. 9 10, and 13; and D.97-11-012, 1997 Cal. PUC LEXIS 1018, \*6 and \*12. Five percent of the par value of SDG&E's long-term securities outstanding on September 30, 2004, was \$68.1 million. (A.05-01-031, attached testimony, Schedule VIII.)

<sup>7</sup> D.02-12-067, *mimeo.*, p. 9.

<sup>8</sup> D.92-11-059, Conclusion of Law 4. (1992 Cal. PUC LEXIS 772, \*15.)

**5. General Order 24-B**

General Order (GO) 24-B requires utilities to submit a monthly report to the Commission that contains, among other things, the following information: (1) the amount of debt issued by the utility during the previous month; (2) the total amount of debt outstanding at the end of the prior month; (3) the purposes for which the utility expended the proceeds from debt issued during the prior month; and (4) a monthly statement of the separate bank account that the utility is required to maintain for all receipts and disbursements of money obtained from the issuance of debt.

In recent years the Commission has routinely authorized utilities to report on a quarterly basis the information required by GO 24-B in order to reduce the utilities' administrative and compliance costs.<sup>9</sup> Therefore, consistent with Commission practice, we will authorize SDG&E to report on a quarterly basis all the information required by GO 24-B with respect to the short-term debt authorized by this Decision. However, SDG&E shall report this information on a monthly basis if directed to do so by Commission staff.

**6. Section 1904(b) Fee**

Whenever the Commission authorizes a utility to issue debt, the utility must pay a fee in accordance with § 1904(b). Section 1904(b) states:

For a certificate authorizing an issue of bonds, notes, or other [debt], two dollars (\$2) for each one thousand dollars (\$1,000) of the face value of the authorized issue or fraction thereof up to one million dollars (\$1,000,000), one dollar (\$1) for each one

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<sup>9</sup> See, for example, D.04-11-015, 2004 Cal. PUC LEXIS 538, \*104; D.04-10-037, 2004 Cal. PUC LEXIS 498, \*49; D.04-04-041, OP 5; D.04-01-009, OP 11; D.03-12-052, OP 6; D.03-12-004, OP 13; D.03-11-018, OP 13; and D.03-09-020, OP 6.

thousand dollars (\$1,000) over one million dollars (\$1,000,000) and up to ten million dollars (\$10,000,000), and fifty cents (\$0.50) for each one thousand dollars (\$1,000) over ten million dollars (\$10,000,000), with a minimum fee in any case of fifty dollars (\$50). No fee need be paid on such portion of any such issue as may be used to guarantee, take over, refund, discharge, or retire any stock, bond, note or other evidence of indebtedness on which a fee has theretofore been paid to the commission. If the commission modified the amount of the issue requested...and the applicant thereupon elects not to avail itself of the commission's authorization, no fee shall be paid, and if such fee is paid prior to the issuance of such certificate by the commission, such fee shall be returned.

This Decision extends SDG&E's authority to issue \$200 million of short-term debt and authorizes SDG&E to issue \$200 million of additional short-term, for total short-term debt authority of \$400 million. The Commission has previously held that the type of authority granted by this Decision is subject to § 1904(b).<sup>10</sup> The calculation of the fee that SDG&E is required to pay pursuant to § 1904(b) is set forth in the following table:

<b>Computation of Section 1904(b) Fee Due on \$400,000,000</b>	
\$2 Fee on each \$1,000 up to \$1,000,000	\$2,000.00
\$1 Fee on each \$1,000 from \$1,000,000 to \$10,000,000	\$9,000.00
\$0.50 Fee on each \$1,000 over \$10,000,000	\$195,000.00
<b>Total Fee</b>	<b>\$206,000.00</b>

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<sup>10</sup> D.02-12-067, *mimeo.*, pp. 6 – 8; D.01-02-011, *mimeo.*, pp. 26 - 27.

SDG&E shall remit the required fee of \$ 206,000 to the Commission's Fiscal Office no later than 10 days from the effective date of this Decision. The authority granted by this Decision shall not become effective until SDG&E has paid the required fee.

## **7. Categorization and Need for Hearings**

In Resolution ALJ 176-3147, dated February 10, 2005, the Commission preliminarily categorized this proceeding as ratesetting and preliminarily determined that hearings were not necessary. There were no protests or other responses to A.05-01-031. Based on the record of this proceeding, we affirm and finalize the determinations regarding categorization and the need for hearings that were made in Resolution ALJ 176-3147.

## **8. Comments on the Draft Decision**

The draft decision in this matter was mailed to the service list in accordance with § 311(g)(1) and Rule 77.7. SDG&E filed comments on May 16, 2005. These comments have been incorporated throughout the final decision adopted by the Commission.

## **9. Assignment of Proceeding**

Michael R. Peevey is the Assigned Commissioner and Timothy Kenney is the assigned Administrative Law Judge in this proceeding.

## **Findings of Fact**

1. Prior to this Decision, SDG&E was authorized to issue \$200 million of short-term debt through December 31, 2007, in addition to the short-term debt that SDG&E may issue without Commission authority pursuant to § 823(c).

2. SDG&E's authority to issue short-term debt pursuant to § 823(c) without Commission authorization currently stands at approximately \$68 million.

3. In A.05-01-031, SDG&E requests authority to issue \$400 million of short-term debt through December 31, 2010, to finance the following: (i) new utility infrastructure; (ii) balancing account undercollections; (iii) retirements or other refunding of SDG&E's long-term debt and preferred stock; (iv) fuel inventories; and (v) other short-term cash needs that may arise. The \$400 million of requested short-term debt is in addition to the short-term debt that SDG&E may issue without Commission authority pursuant to § 823(c).

4. SDG&E represents that it will invest more than \$600 million annually during 2005-2009 to finance utility infrastructure investments, including more than \$3 billion for electric generation and transmission capacity.

5. SDG&E may need to issue up to \$400 million of short-term debt during 2005 – 2010 to finance new utility infrastructure and for other purposes.

6. Decisions 97-11-012 and 02-12-067 require SDG&E to reduce its outstanding short-term debt to 5% of the par value of SDG&E's long-term capital (long-term debt, preferred stock, and common stock) outstanding at least once every 12 months. In A.05-01-031, SDG&E asks that the 5% condition be repealed.

7. The 5% condition could impede SDG&E's ability to obtain capital for needed utility infrastructure investments.

10. General Order 24-B requires utilities to submit a monthly report to the Commission that contains, among other things, the following information: (i) the amount of debt issued by the utility during the previous month; (ii) the total amount of debt outstanding at the end of the prior month; (iii) the purposes for which the utility expended the proceeds from debt issued during the prior month; and (iv) a monthly statement of the separate bank account that the utility is required to maintain for all receipts and disbursements of money obtained from the issuance of debt.

11. The Commission routinely authorizes utilities to report on a quarterly basis the information required by GO 24-B in order to reduce the utilities' administrative and compliance costs.

12. This Decision does not address the reasonableness of the following: (i) the rates, terms, and conditions of any debt issued by SDG&E pursuant to this Decision; (ii) any expenditures made with the proceeds from short-term debt issued pursuant to this Decision; (iii) the ratio of SDG&E's short-term debt to its other debt and equity; and (iv) SDG&E's forecast of cash requirements and infrastructure expenditures.

13. This Decision supplants and replaces SDG&E's authority to issue short-term debt conferred by prior Decisions.

14. Notice of A.05-01-031 appeared in the Commission's Daily Calendar on February 3, 2005. There were no protests or other responses to the petition.

### **Conclusions of Law**

1. This is a ratesetting proceeding.

2. There is no need for an evidentiary hearing.

3. Application 05-01-031 is subject to § 816 *et seq.* The Commission has broad discretion under § 816 *et seq.*, to approve or reject A.05-01-031. The Commission may also attach conditions to its approval of A.05-01-031 in order to protect and promote the public interest.

4. SDG&E should be granted authority through December 31, 2010, to issue \$400 million of short-term debt for the following purposes: (i) temporarily finance new utility infrastructure; (ii) finance balancing account undercollections and fuel inventories; (iii) temporarily finance the retirement and refunding of utility long-term debt and preferred stock; and (iv) satisfy other utility-related short-term cash needs that may arise.

5. SDG&E should be granted authority through December 31, 2010, to renew, refinance, extend, or replace, as necessary, the short-term debt issued pursuant to this Decision for the purposes authorized by this Decision.

6. SDG&E should not use the short-term debt authorized by this Decision to fund dividends, inter-corporate borrowing, or management fees paid to its parent company or other affiliates.

7. SDG&E should be exempted from the 5% condition to help ensure that SDG&E has access to sufficient capital to fund needed infrastructure investments.

8. The short-term debt authorized by this Decision is not subject to the Competitive Bidding Rule.

9. SDG&E should maintain records pursuant to § 824 and GO 24-B that  
(i) identify the specific short-term debt issued pursuant to this Decision, and  
(ii) demonstrate that the proceeds from such debt have been used only for the purposes authorized by this Decision.

10. Consistent with Commission practice, SDG&E should be authorized to report on a quarterly basis all information required by GO 24-B regarding the short-term debt authorized by this Decision. However, SDG&E should report this information on a monthly basis if directed to do so by Commission staff.

11. SDG&E is required by Commission precedent and § 1904(b) to pay a fee of \$206,000 for the \$400 million of short-term debt authorized by this Decision.

12. The following Order should be effective immediately.

**ORDER****IT IS ORDERED** that:

1. Application 05-01-031 filed by San Diego Gas & Electric Company (SDG&E) is granted.
2. SDG&E is authorized pursuant to Pub. Util. Code § 816 *et seq.*, to issue \$400 million of short-term debt through December 31, 2010, for the following purposes: (i) provide temporary financing for new utility infrastructure; (ii) finance balancing account undercollections and fuel inventories; (iii) provide temporary financing for the retirement and refunding of SDG&E's long-term debt and preferred stock; and (iv) satisfy other utility-related short-term cash needs that may arise.
3. The short-term debt that SDG&E may issue pursuant to this Order is in addition to the short-term debt that SDG&E may issue without Commission authorization pursuant to § 823(c).
4. SDG&E is granted authority through December 31, 2010, to renew, refinance, extend, or replace, as necessary, the short-term debt issued pursuant to this Order for the purposes authorized by this Order.
5. SDG&E shall not use the short-term debt authorized by this Order to pay dividends, finance inter-corporate borrowing, or pay management fees to its parent company or other affiliates.
6. SDG&E shall maintain records pursuant to § 824 and General Order (GO) 24-B that (i) identify the specific short-term debt issued pursuant to this Financing Order, and (ii) demonstrate that the proceeds from such debt have been used only for the purposes authorized by this Order.
7. SDG&E is exempt from the 5% condition described in Finding of Fact 6.



8. SDG&E may report on a quarterly basis all information required by GO 24-B regarding the short-term debt authorized by this Order, except that SDG&E shall report this information on a monthly basis if directed to do so by Commission staff.

9. Within 10 days from the effective date of this Order, SDG&E shall remit to the Commission's Fiscal Office a check for \$206,000 pursuant to § 1904(b). The decision number of this Order shall appear on the face of the check. The authority granted by this Order shall become effective when SDG&E has remitted \$206,000.

10. Application 05-01-031 is closed.

This Financing Order is effective today.

Dated \_\_\_\_\_, at San Francisco, California.